Senator Dave Durenberger

STATEMENT OF
SENATOR DAVE DURENBERGER
ON THE
NEW EXECUTIVE ORDER ON NATIONAL SECURITY INFORMATION
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The new Executive Order on National Security Information is a real disappointment. It could result in classification of information that ought to remain open to the public, and seriously limit the public's access to information that was once secret but need not be secret any longer. It affects the media, the public and historical research. Many of the Executive Order's flaws may be corrected in the Implementing Directive that is to be issued later and I hope that will be the case. However, other shortcomings require new legislation that I plan to introduce.

This Executive Order leaves me more convinced than ever that Congress must not rush into any FOIA or Privacy Act amendments. The administration had the opportunity to submit a bill regarding intelligence exemptions to the Intelligence Committee. In fact, such a bill was promised. Instead, the administration chose to limit the public's access to information through administrative fiat, often against the advice of members of the Intelligence Committee. In light of that decision, I see no reason to grant them legislative relief. Let the administration see how this new Order works. When a bill is submitted, let it correct the flaws in this Order.

The deletion of the "identifiable damage" standard for classifying information is certain to result in keeping information from the public unnecessarily. The executive branch does not intend this, but it is bound to happen. I will introduce legislation that will protect the Freedom of Information and Privacy Acts from the effects of this change.

The lack of a "balancing test" between the need to protect information and the benefits that flow from informing the public is unacceptable, especially in light of other provisions that change many decisions from permissive ones to mandatory ones in favor of classification and against declassification. I will introduce legislation to insure the classified information kept from FOIA and Privacy Act petitioners is first subjected to the balancing test by the agency that classifies it.

The provision allowing re-classification of information that "may reasonably be recovered" is far too broad. Already, overzealous bureaucrats have begun to threaten people with legal action if they do not return various materials previously released under the Freedom of Information Act. Re-classification should be allowed only if voluntary recovery is possible. I urge the executive branch to make this crystal clear in its Implementing Directive. If it is not clarified, I will introduce legislation to protect persons who receive information under the Freedom of Information or Privacy Acts.

I also am concerned about other provisions of the Executive Order that may infringe on the rights of individuals as guaranteed by the Privacy Act. The definition of "confidential source," for example, would allow an agency to classify its surveillance or attempted recruitment of unwitting Americans who could be seen as possible sources of information. I urge the executive branch to limit the applicability of this definition to foreign individuals or organizations. This would preserve law-abiding people's rights under the Privacy Act to find out whether the government has been following them.

As a member of the Senate Select Committee on Intelligence, I am sensitive to the need to protect information for the sake of our country's security. However, we have seen the abuses that can come from an over-zealous protection of information. In recent years, those abuses have encouraged the Congress and previous administrations to carefully weigh necessary secrecy with the public's right to know. I am not willing to unnecessarily tip the scales in favor of secrecy.

Contact: Tom Horner
(202) 224-3244